

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF TRANSPORTATION
ON ROLES AND RESPONSIBILITIES**

1. PARTIES.

The "Parties" to this Memorandum of Understanding (MOU) are the Department of Homeland Security (DHS) and the Department of Transportation (DOT).

2. AUTHORITY.

a. DHS enters into this MOU pursuant to 6 U.S.C. § 112(b), 49 U.S.C. § 114, and Homeland Security Presidential Directive/HSPD-7.

b. DOT enters into this MOU pursuant to 49 U.S.C. § 301 and Homeland Security Presidential Directive/HSPD-7.

3. PURPOSE.

The purpose of this MOU is to facilitate the development and deployment of transportation security measures that consider efficiency in the movement of goods and people at the same time that they engender greater safety and security. The Parties recognize the importance of having dedicated points of contact to facilitate communication between the two departments and a clear mandate laying out how and when consultation will occur on issues that have the potential to impact both departments' statutory responsibilities. The primary objective is to develop procedures by which the two departments can continue to improve their cooperation and coordination in promoting the safe, secure, and efficient movement of people and goods throughout the transportation system. Specific delineations of roles, responsibilities, resources, and commitments concerning particular matters will be addressed in annexes to this MOU.

4. BACKGROUND.

a. The events of September 11, 2001, significantly changed the Nation's homeland security posture. Recognizing the importance of transportation security, on November 19, 2001, the President signed into law the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (2001), which, among other things, established the Transportation Security Administration (TSA), originally in DOT and now in DHS. In enacting ATSA, Congress recognized the importance of security for all forms of transportation and related infrastructure, established TSA, and conferred upon TSA responsibility for security in all modes of transportation.

b. Thereafter, on November 25, 2002, Congress enacted the Homeland Security Act (HSA), Pub. L. 107-296, 116 Stat. 2135 (2002), which consolidated 22 Federal agencies with responsibilities for homeland security, including TSA and the U.S. Coast Guard, into the new DHS. DOT recognizes that DHS has primary responsibility for transportation security, and that DOT plays a supporting role, providing technical assistance and assisting DHS when possible with implementation of its security policies, as allowed by DOT statutory authorities and available resources. In addition to DHS authority, DOT retains statutory authority and responsibilities for such matters as passenger and freight transportation safety (including rail security), and the transportation of hazardous materials (including security), which will have some effects on security matters. In light of these authorities, DHS and DOT will work together to achieve the required level of multi- and inter-modal transportation security. The Parties desire a strong partnership in order to reduce the vulnerability of transportation passengers, employees, and systems to terrorism and other disruptions.

5. COMMUNICATIONS.

a. The Parties place high value on regular, timely, and full communications between themselves, and commit themselves to ensuring strong communication links through their actions. Timely communications between the two Parties at the highest level (Secretary, Deputy Secretary, or Chief of Staff) will take place if judged necessary by either Party.

b. DHS will designate a single point of contact to coordinate with DOT for each individual project or issue. Unless otherwise designated, DHS' Director of the Operational Integration Staff will be the overall point of contact for operational matters and the Executive Secretary will be the point of contact for all other matters. Unless otherwise designated, the DOT Director, Office of Intelligence and Security, will serve as the coordinator for DOT.

6. PRINCIPLES OF AND GENERAL AREAS FOR COOPERATION.

a. **Principles.** The Parties agree to the following principles:

(1) DHS has primary responsibility for security in all modes of transportation. In this regard, DHS will establish national transportation security performance goals and, to the extent practicable, develop appropriate security measures for the respective modes to achieve an integrated national transportation security system.

(2) DHS, in consultation with DOT and affected stakeholders, will identify, prioritize, and coordinate the protection of critical infrastructure to achieve established national performance goals for transportation security and seek the resources for Federal implementation. DOT will assist DHS in developing those protective measures affecting transportation, consistent with DOT's existing legal authority.

(3) Recognizing that DHS has responsibility for transportation security, DHS and DOT will continue to develop relationships with domestic and international stakeholders, both governmental and non-governmental, to ensure that the concerns of such stakeholders are considered in the establishment of national transportation security policies, strategies, and plans. DOT will cooperate with and assist in DHS' efforts to address stakeholder concerns regarding transportation security.

(4) DOT has unique owner-operator internal and protective security responsibilities for its own facilities, personnel, operations, and information systems, including the air traffic control system and two locks of the St. Lawrence Seaway. DOT will identify, prioritize, assess, remediate, and protect such internal critical infrastructure and key resources, and coordinate and collaborate with DHS on such matters, as appropriate.

(5) DHS will set appropriate transportation security standards, taking into consideration such comments as may be provided by DOT, facilitate coordination of intermodal security issues, and ensure the execution of those standards. DOT will collaborate with DHS in the implementation of such security standards, to the extent consistent with DOT's legal authority and to the extent that DOT can provide such assistance without adversely impacting its ability to perform its core missions. Where DOT anticipates that assisting DHS will require a substantial expenditure of resources, DOT will discuss with DHS the possible need for an annex to this MOA setting forth the terms and conditions of such assistance in a particular area.

(6) While DHS has the overall lead for transportation security regulations, both Parties have regulatory responsibilities in the area of transportation security. The Parties will work cooperatively to develop an integrated system of regulations providing for a safe, efficient, and secure transportation system and will issue regulations within their respective legal authorities. Each Party will seek early and frequent coordination with the other Party during the development of these regulations. The Parties will strive to exchange timely comments and coordinate issues concerning such regulations to the fullest extent possible. In addition, DHS or DOT may issue other requirements (including DHS security directives) or guidance affecting transportation security, after coordinating with the other Party.

(7) Throughout the budget development, justification, and execution process, the Parties will communicate with each other concerning funding for transportation security projects in order to present a coordinated position on transportation security funding matters and to avoid duplicative requests for security funding.

(8) The Parties will cooperate to the extent permissible by law in sharing intelligence, security, law enforcement, and threat information affecting transportation. To that end, DHS will promptly provide threat information, intelligence, and intelligence products related to transportation to DOT's Office of Intelligence and Security. DOT will promptly provide the same to DHS, through the Homeland Security Operations Center.

(9) Pre-existing memoranda of agreement (MOA) or MOUs between elements of DHS and elements of DOT, such as the TSA-Federal Aviation Administration MOA dated February 28, 2003, are not superseded by this MOU and remain in effect until rescinded, modified, or incorporated into annexes to this MOU. DOT and DHS will review these pre-existing agreements to determine whether to amend, continue or revoke.

b. **Cooperation.** As the need arises, DHS and DOT will continue to review their respective legal authorities, core competencies, and capabilities to identify specific areas of common interest in which the Parties may benefit from specific designation of roles and responsibilities in accordance with the principles set forth in this MOU.

Specific tasks and areas of responsibility that are appropriate for cooperation will be documented in annexes to this MOU. Each annex will be individually approved and signed by appropriate representatives of DHS and DOT.

c. **Obligations.** Unless otherwise provided for in annexes hereto, this MOU does not impose specific program, resource, or budgeting obligations on either Party.

7. OTHER PROVISIONS.

a. **Severability.** Nothing in this MOU or any annex thereto is intended to conflict with current statutes, regulations, orders, or directives of DHS or DOT, or any other Federal agency or entity. If a provision of this MOU, or any annex thereto, is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU and any annexes thereto will remain in full force and effect.

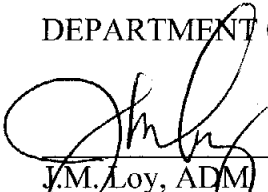
b. **Rights and Benefits.** Nothing in this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or officers, State agencies or officers carrying out programs authorized under Federal law, or any other person.

c. **Amendment and Modification.** This MOU may be amended or revised at any time by written agreement of the Secretary or Deputy Secretary of Homeland Security and the Secretary or Deputy Secretary of Transportation. Similarly, annexes to this MOU may be revised at any time by written agreement of the appropriate representatives of DHS and DOT.

d. **Period of Agreement/Termination.** This MOU will be effective as of the date of final signature by both Parties and remain in effect until terminated by either Party. Unless otherwise specifically provided in an annex hereto, either Party may terminate this MOU or any annex hereto upon ninety (90) days written notice.

APPROVED BY:

DEPARTMENT OF HOMELAND SECURITY



J.M. Loy, ADM
Deputy Secretary of Homeland Security

Date: 9/28/04

DEPARTMENT OF TRANSPORTATION



Kirk K. Van Tine
Deputy Secretary of Transportation

Date: 9/27/04